Hon'ble Irshad Hussain, J.

Heard Sri Subhash Upadhyay learned counsel for petitioner and Sri N.C.Gupta learned Standing Counsel for respondents.

On facts the case is covered by the decision of this court dated 16-10-2003 delivered in Writ Petition No. 633(M/S)/ 2003 Km. Kumudani vs. Uttaranchal Skhisha Parishad and therefore this writ petition is disposed of in terms of the said judgment.

(Irshad Hussain, J.)

Dated: 22-10-2003

ISB

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 633 (M/S) year 2003

Km. Kaumudi (Minor)

D/o Kailash Chandra Maithani

Versus

Uttaranchal Shiksha Evam

Parisha Parishad Ramnagar.

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 16.10.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.6

Writ Petition No. 633(M/S)/2003 (Leading Case).

Km. Kaumudi (minor)

D/o Kailash Chandra Maithani ……. Petitioner.

Vs.

1.Uttaranchal Shiksha Evam Pariksha Parishad,
Ram Nagar, District Nainital through Secretary

2.Secretary, Uttaranchal Shiksha Evam Pariksha Parishad
Ram Nagar, District Nainital …… Respondents.

Counsel for petitioner **-Sri R.Dobhal.**

Counsel for respondents **-Sri N.C.Gupta.**

Hon'ble Rajesh Tandon, J.

The present writ petition has been filed for a writ, order or direction in the nature of mandamus commanding the respondents for revaluation of answer sheets of 1st and a2nd theory papers of Physics and in case the petitioner gets passing marks in the said papers, then she be declared passed in Intermediate Examination 2003.

The facts giving rise to the present writ petition are that the petitioner appeared in Intermediate Examination 2003 conducted by the respondent No. 1 as regular candidate Group-B(Science Group) from Government Girls Inter College, Gopeshwar, District Chamoli and she was allotted roll no. 031874. According to the case of the petitioner she has appeared in all the papers i.e. general Hindi, English, Physics, Chemistry and Biology and answered all the papers in the said subject according to her wisdom and best of her abilities.

On 26th June 2003 the result of Intermediate Examination 2003 was declared by the respondent no.3 which was published in the news paper on 27-6-2003, in which the roll number of the petitioner was missing. On 12.7.2003 a mark sheet of Intermediate Examination 2003 was issued to the petitioner by Principal of Government Girls Inter College Gopeshwar District Chamoli in which the petitioner has been declared failed on account of poor performance in both the theory papers of physics. The petitioner has been shown to have secured 07 marks out of 35 in each paper of Physics.

The grievance of the petitioner is that she has correctly answered the question nos. 2©, 2(e), 3(b), 3(d), 4(b), 4(c), 5(e), and 7(c), of 1st theory paper of Physics and further she has correctly answered the question nos. 1(d), 3(c), 1(a), 1(e), 2(b),2(d),3(a) and 7(b) and therefore is entitled for 27 marks in first paper. Further the petitioner has stated that she has correctly answered the question nos. 1(d), 3(c), 5(a), 5(c) and 7(b) of 2nd theory paper of Physic and further stated that she has also answered the question nos. 1(a), 1(c), 1(e), 2(a), 2(d), 3(a) , 3(b) and 6(a) correctly and more than 15 marks will get in Physic second paper.

On 7th of August 2003 the following order was passed:

> *"Heard the learned counsel for the parties. The answer books received from the office of the Board of High School Uttaranchal shall be kept before the Joint Registrar in the safe custody and the matter may be put up on Monday 13th August, 2003. In the meantime the Standing Counsel will request the Principal, Govt. Inter College, Nainital to depute subject teacher of Math and Physic for scrutiny of the answer books at the cost of the petitioner."*

In pursuance of the aforesaid order the copies were produced before the Registrar. According to the report dated 24th September 2003 the report has been submitted to the following effect:-

> *"Scrutiny of the answer sheets was done before me by Sri K.L.Sah, Leclturer G.I.C. Patwadangar, today on 24.9.2003, after opening sealed answer sheets which were again kept in sealed cover after scrutiny."*

Heard the members of the Bar for the petitioner and the Standing Counsel for the respondent. The counsel for the petitioner has submitted that although the scrutiny was made before the Registrar but the guardians were not permitted to look into the answer books as the guardians are the best judge to see the future of their children. The Secretary concerned has not permitted any of the representative on behalf of the petitioner to participate.

So far as the first prayer is concerned regarding revaluation, law is well settled that revaluation can not be permitted. The Apex Court in Bhushan

Uttam Khare vs. Dean B.J. Medical College, 1992(2) SCC 220: AIR 1992 SC 917, has held as under:

> *"In deciding the matters relating to orders passed by authorities of educational institutions, the Court should normally be very slow to pass orders in its jurisdiction because matter falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice."*

The Apex Court in Arun Desai vs. High Court of Bombay through Chief Justice, reported in 1984 (Supp) SCC 372, has held as under:

> *"Students who fail in their examinations are generally prone to make allegations that the assessment of their answer scripts is defective, arbitrary or partial to explain their failure and to console themselves with the thought that not they but the examiners are to be blamed for that."*

The Apex Court in Maharashtra State Board of Secondalry and Higher Secondary Education vs. Paritosh Bhupesh Kumarasheth AIR 1984 SC 1543 has held the evaluation of answer book does not attract the principle of nature justice. The observations of the Apex Court are as under:

> *" A process of evaluation of answer papers or of subsequent verification of marks does not attract the principal of natural justice since no decision making process which brings about adverse evil consequences to the examines is involved. The principal of natural justice cannot be extended beyond reasonable and relational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of evaluation made by the examiners by themselves conducting on inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. It was further held in this decision that it is in the public interest that the result of public examination when published should have*

some finality attached to them. If inspection and verification in the presence of the candidates and revaluation are to be allowed as of right it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. It was further held in the instant case that the Court should be reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matter sin preference to those formulated by professional men possession technical expertise and rich experience ofactual day-to-day working of educational institutions and the departments controlling them."

Relying upon the aforesaid observations made by the Apex Court it has been held by the Allahabad High Court in a case Subhash Chand and others vs. State of U.P. and others (2001) UPLBEF 1085 as under:

"The question is whether in absence of any statutory rule this court can direct rechecking or revaluation of the answer books of the petitioners. The petitioners appeared in B.T.C. entrance examination 1998-99 and were declared unsuccessful. Answer books could be revealed or rechecked if the rules provide for it. In absence of any statutory rule the answer books cannot be rechecked or revalued by the respondents nor such a relief can be granted by this Court. The petitioners may be good students but that cannot entitled them to make self assessment and claim that they should have been awarded 90% marks. If self assessment is adopted as the basis of revaluating answer books in an examination and this Court is asked to interfere on his ground then the entire system of competitive examination shall come to a standstill and this Court shall stand converted into an evaluating body of answer books."

It has further been held by the Allahabad High Court in the case Mobeen Ahmad Ansari vs. State of U.P. and other (1999) 1 UPLBEC 603 as under:

"It is a matter of great concern that in the recent years there is consideration influx of such writ petitions in this Court has

increased. Earlier the Board of High School and Intermediate Education had inspired so much confidence that seldom writ – petition were filed. Filing of writ petition as such a large scale before this court indicate that there is considerable dissatisfaction among the students and their parent which requires introspection by the Board authorities as well. Although this Court seldom interfere in the revaluation of the marks, but with a view to have greater accountability and transparency there is a need for framing some certain rules to rectify the error, mistakes or defection calculation of the marks."

Coming to the merits of the controversy the counsel for the petitioner has referred Rule 21 of Chapter XII of the U.P. Education Code. The Hindi version as well as English version are reproduced as under:

"21. Answer books of those candidates who have failed in only one subject by not more than 5 per cent marks fixed for that subject, shall be scrutinized without any application or fees. Other examinees who want to get their answer books scrutinized may get that done under following rules:

(a) Any examinee who appeared in the examination conducted by the Board, may apply for rechecking of his marks of subjects by scrutiny.

(b) All such applications must be accompanied by a treasury challan of Rs. 20 per subject showing that the prescribed fees has been given. In case of candidates sending the application from from outside Uttar Pradesh his fees should be sent to the office of the Secretary though crossed postal order or crossed bank draft payable at State Bank of India, Allahabad Branch.

(c) All such applications must be given within a period of thirty days from the date of declaration of result.

(d) (Rescinded).

(e) Result of all the cases applied for scrutiny and all cases of self scrutiny, where they affect the result D(marks or class or failed or passed), shall be informed

to other concerned persons and the candidates after scrutiny is closed. In other cases no information will be furnished and no correspondence will be made. Provided also that the result of scrutiny, where the fees has been paid by the candidate, shall be informed in all event whether any change has been effected or not.

(f) *Normally in the work of scrutiny rechecking of answer books of the examinees is not inclusive. In that it is seen whether any mistake has occurred in totaling of marks in separate questions, in brining forward that or not awarding of marks to any question or its part.*

b21- mu ijh{kkfFk;k dh mRrj ifLrdk;k tk e[; ijh{kk e doy ,d fo"k; e m1 fc"k; d fy, fu/kkfjr 5 ifr'kr vadk 1 vf/kd 1 vuqRrh.k ugh gvk g] fcuk 'kqYd vFkok vkonu&i= d 1fujhf{kr dh tk;xhA vU; ijh{kkFkh] tk viuh MRrj&iLrd 1fujhf{kr djkuk pkgr g] fuEufyf[kr fu;ek d vuq1kj djk 1dr g&

¼d½ dkbZ ijh{kkFkh] tk ifj"kn }kjk 1pkfyr ijh{kk e ifo"V gvk g] fo"k;k d viu vadk dh 1fujh{kk }kjk iqu% tkp djku d fy, vkonu i= n 1dr k g]

¼[k½ ,d 1eLr vkonu i=k d 1kFk dk"k pkyku dh ,d ifrfyfi ;g fn[kkr g, fd 20 #i;k ifr fc"k; dh nj 1 fu/kkfjr 'kqYd n fn;k x;k g] vo'; gkuh pkfg,A mRrj in'k d ckgj d 1Fkku 1 vkonu i= Hkstu oky ijh{kkfFk;k d 1c/k e ;g 'kqYd 1fpo d dk;ky; e jf[kr ikLVy vkMj vFkok LVV cd vkQ bf.M;k dh bykgkckn 'kk[kk ij jf[kr cd MQV }kjk Hkstk tkuk pkfg,%

¼x½ ,d 1eLr vkonu i= ijh{kkQy ?kk"k.kk dh frfFk 1 rh1 fnuk dh vof/k d vUnj vo'; fn;k tku pkfg;%

¼?k½ ¼fo[kfMr½

¼M½ 1fujh{kk d ijh{kkFkh }kjk vkofnr 1eLr ekey dk rFkk Lor% 1fujh{kk d 1eLr ekeyk dk ijh{kkQy] tgk m1dk iHkko ijh{kkQy ij iMrk g ¼ vad vFkok J.kh vFkok vuqrh.k vFkok mRrh.k½] 1fujh{kk dh 1ekfIr ij ijh{kkFkh dk rFkk vU; 1Ecf/kr C;fD;k dk 1fpr dj fn;k tk;xkA vU; ekeyk e dkbZ 1puk ugh nh tk;xh vkj dkbZ i= 0;ogkj ugh fd;k tk;xkA ;g Hkh ifrcf/kr g fd 1fujh{kk dk

ijh{kkQy] tgk ijh{kkFkh }kjk 'kYd fn;k x;k g] iR;{d n"kk e lfpr fd;k tk;xk Hkyh gh dkbZ ifjorZu u gksA

¼p½ lfujh{kk d dk;Z e lk/kkj.kr;k ijh{kkfFk;k dk mRrj iqLrdk dh iqf"V tkp lfefYyr ugh gSA mlesa ;g n[kk tkrk g fd D;k vyx&vyx i'uk e fn;s x;s vadk dk ;kx dju] mlgs vxzsfr dju vFkok fdlh i'u vFkok mlds Hkkx ij vad nus e NVus dh dkbZ=fV rk ugh gbZ gSA

Rule 21 relates to the procedure regarding scrutiny. Clause (f) which contains a prohibition regarding rechecking of answer books. Therefore the scrutiny is only confined to the totaling of marks in separate questions. In the light of the aforesaid facts marks have been counted before the Registrar General and the same has been reported to this Court. normally there can not be any inference under Article 226 of the Constitution of India.

The counsel for the petitioner has referred the judgment of Astik Kumar Pandey Vs. Director/Chairman Board of High School and Intermediate Examination, U.P. and others 2001 Volume-3 U.P. Local Bodies Cases 2088 wherein it has been found that the educational authorities have done deliberately the mischief with an intention to harm the petitioner as will appear from paragraph-4, 6, 7 and 8 of the judgment. The same is quoted below:

> *"4. In compliance of the order passed by this Court, the learned Standing Counsel has produced before this Court the answer books of Math-1 paper, Math-II paper, Social Science-I paper and Social Science-II paper. The cover pages of the answer books of Math-II paper which bears the signature of the invigilator is in the hand writing of the petitioner which was compared with the cover page of answer book of Math-I paper, answer books of Social science-I paper and Social Science-II paper. The six inside pages excluding the cover page are in different had writing. The second answer books containing four pages out of which two are blank is also in different had writing which is not of the petitioner.*
>
> *6. The mischief has been done either at the center where the petitioner submitted the answer books or at the place where the answer books were sent for evaluation is really shocking and it has been done deliberately with an intention to harm the petitioner. From the perusal of answer books and the marks obtained in other subjects and mathematics-I paper, there is no*

dispute that the petitioner is a bright student who has to do much in his life. The Board of High School and Intermediate Education is the custodian of the answer books of the students and in the instant case in spite of sufficient time the Board could not produce the original answer books of the petitioner of Mathematics-II paper.

7. In view of the aforesaid facts this Court has no option except to believe the averments of the petitioner made in paragraph-8 of the writ petition which is un-controverted where it has been stated that he will get more than 40 marks in Mathematics-II paper.

8. In the result the writ petition succeeds and accordingly the Secretary of the High School and Intermediate Education Board, Allahabad is hereby directed to award 40 marks to the petitioner in Mathematics-II paper as Mathematics is a scoring subject and issue a fresh mark sheet within three weeks from the date a certified copy of this order is produces."

In the case of Mobeen Ahmad Ansar Vs. State of U.P. and others 1999 (1) U.P.B.E.C.Case page 603 it has been pointed out that the Board does not have any rule for evaluation of the marks but with a view to create transparency there is need for provision to evaluate the marks. The relavant portion of the judgment is as under:-

" It is a matter of great concern that in the recent years there is consideration influx of such writ-petitions in this Court has increased. Earlier the Board of High School and Intermediate Education had inspired so much confidence that seldom writ petition were filed. Filing of writ petition on such a large scale before this court indicate that there is considerable dissatisfaction among the students and their parents which requires introspection by the Board authorities as well. Although this Court seldom interfere in the revaluation of the marks. The Board also does not have any rule for revaluation of the marks, but with a view to have greater accountability and transparency there is a need for framing some certain rules to rectify the error, mistakes or defection calculation of the marks."

The counsel for the petitioner has also referred the judgment of Vaibhav Pandey v. Board of High School and Intermediate Education (1998)2 U.P.L.B.E.C. 1501 wherein direction has been given for checking the answer books in presence of the guardian of the petitioner. The observations in the case of Vaibhav Pandey is quoted below:

> *"2.The past record of the petitioner indicates that he is an exceptionally brilliant student. In High School examination, the petitioner indicates that he is an exceptionally brilliant student. In High School examination, the petitioner has been awarded 19 marks out of 32 in Hindi 3rd papers. The petitioner has been awarded much higher marks in other subjects. The apprehension of the petitioner is that his answer book of Hindia IIIrd paper has not been correctly examined.*
>
> *3. This writ petition is finally disposed of with the direction that respondent No.2 Apar Sachiv, Madhyamik Shiksha Parishad shall himself check the answer book of the petitioner in Hindi IIIrd paper of High School Examination, 1998 within a period of one moth from the date a certified copy of this order is produced before him. On the date on which the answer book of the petitioner is being looked or examined by respondent No.2, the petitioner's guardian may also remain present. If any discrepancy is found in the answer book, it shall be corrected. The roll number which had been allotted to the petitioner is 1064476."*

The aforesaid judgment has also been followed in Trishma Singh vs. U.P. intermediate Education Board Allahabad, 2001 (3)U.P. Local Bodies Cases 2071. Paragraph-7 of the judgment is important which is quoted below:-

> *"Learned counsel, for the petitioner has placed reliance on the case of Vaibhav Pandey v. Board of High School & Intermediate Education (1998) 2 UPLBEC 1501, in which this Court held as under:*
>
> > *This writ petition is finally disposed of with the direction that respondent No.2 Apar Sachiv, Madhyamik Shiksha*

Parishad shall himself check theanswer book of the petitioner in Hindi IIIrd paper of High School Examination, 1998 within a period of one month from the date a certified copy of this order is produced before him. On the date on which the answer book of the petitioner is being looked or examined by respondent No.2, the petitioner's guardian may also remain present. It any discrepancy is found in the answer book, it shall be corrected. The roll number which had been allotted to the petitioner is 1064476."

"He has also plced reliance on the case of Mobeen Ahmad Ansari v. State of U.P. 1999 (1) ESC 432 (All) (LB), in which this Court had shown anguish on the functioning of the U.P. Board in the following words:

"It is a matter of great concern that in the recent year considerable influx of such writ petitions in this court has increased. Earlier, the Board of High School and Intermediate Education had inspired so much confidence that seldom writ petitions were filed. Filing of writ petitions on such a larger scale before this Court indicates that there is considerable dis-satisfaction among the students and their parents, which requires introspection by the Board authorities as well. Although, this does not have any rule for revaluation of the marks, but with a view to have greater accountability and transparency, there is need for framing some certain rules to rectify the error, mistakes or defective calculation of marks."

A perusal of the answer sheets before the Registrar the following reports are available :-

1. Galring example has been found in writ petition 735/03 which is as under:-

Þe\u vk t fnukd 24-9-03 dk gkbLdy 0095912 dk lfujh{kk dh ft lesa i010 12 esa thu c<s tk fd tkpk ugh x;k m1s tkpdj vad c<k;s x;s rFkk i0 18 esa pkj vad fn;s x;s Fk ijUrq rkfydk esa nk gh p<A bl idkj ikp vad ;kx esa c<Ab

2. In Writ Petition No. 723/2003 the counsel for the petitioner has pointed out that the educational authorities have already given the marks before scrutiny has started.

3. In W.P. No. 749/2003 it has been pointed out that the copies have not been received with regard to the relevant paper and scrutiny has been done in respect of 1st paper of maths in High School.

4. In w.p. No. 726/03 the petitioner has produced the letter of the respondent with respect of 4 marks have been increased. The said letter is reproduced as under:-

fjV fifV'ku l0 726@2003 ,e0ch0ikIr gkuk ij vu0 130303 Nk= 'k'kkd 'k[kj dh okfNr mRrj ifLrdkvk dk voykdu fd;k x;k ftlesa xf.kr iFke i'ui= dh mRrj ifLrdk esa 41 vad izkIr Fk yfdu ijh{kd }kjk xyrh ls ,okM Cyad esa 04 vad p<k;s x;s FkA idj.k fuLrkfjr ij dk;ky; ftyk fo/kky; fujh{kd m0fl0 uxj ds ek/;e ls if"kr dj fn;k x;k gS dI;k idj.k ftyk fo?kky; fujh{kd dk;ky; m0fl uxj ls ikIr dj lfc/kr i= dk l'kkf/kr ijh{kQy dh vad rkfydk fuxr dj nA rFkk lEcfU/kr i= ls io fuxr vad i= ey #I esa okil yadj bl dk;ky; dk if"kr djus enn dj nA

5. In writ petition No. 817/2003 Sri Ramji Srivastava counsel for petitioner has stated that one mark in chemistry 1st paper was found increased although in the report no such thing has been mentioned.

Therefore, all the answer books are required to be scrutinized in accordance with rule 21 of the rules framed under the Code in the presence of the guardian.

Counsel for the respondent Sri. N.C. Gupta has argued that in some of the answer books the marks were corrected on account of the scrutiny applied by the students.

In view of the decision of 1999(1) U.P. Local Bodies and Educational Cases 603 the respondents require greater accountability and transparency in the matter of the checking of the copies because there has been a considerable dissatisfaction among the students and parents which require a confidence in the education system of the respondents.

The respondent shall in accordance with rule 21 Chapter Xii will scrutinize the answer books. The students shall submit proper applications for that purpose. Those who have already need not apply again.

As rightly pointed out in 1999(1) UPLBC 603 that in the recent years there is a increase of such writ petitions. Thus in order to have accountability and transparency there is a need for framing rules to rectify the error as mistake in calculation of marks. Even in this session, answer books were directed to be scrutinized before the Registrar General of the Court of the Court in pursuance of my order dated 17-9-03. In various answer books calculation mistakes have been found which loses confidence of general student.

The education is being treated as a part of Article 21 of the Constitution of India. Uttaranchal Education and Examination Board is therefore, accountable for the mistakes committed by its officers.

The authorities of the Board are, therefore, bound to perform their duties as has been rightly stated in Bhagwat Geeta Chapter 18-(48) to the following effect;-

lgt dsu dkUrsu lnk"kefi u R;tsrA
lokjEHkk fg nk"k.k /kwekufxfnoko`rkAA

"Therefore, Arjuna, one should not abandon one's innate duty, even though it may be tainted with blemish; for even as fire is enveloped in smoke, all undertaking are clouded with demerit."

As rightly said by Swami Vivekanand in the following words;

"A man must not be judged by the nature of his duties but the manner in which he does them."

In view of the aforesaid observations Secretary Uttaranchal Shiksha Parishad shall personally look to the scrutiny of answer books. He will also appoint a committee which may be called as

Moderators. The process of scrutiny shall be done in the presence of the parents/guardians.

In the light of the aforesaid facts and circumstances the answer books among with its sealed cover are sent back to the respondents. The respondent secretary shall complete the above work by 15th of November 2003.

With the aforesaid observation Writ Petition is disposed of. There will be no order as to costs.

(Rajesh Tandon,J.)

Dated: - 16-10-2003

ISB